

**PUBLIC PROTECTION CABINET**  
**Kentucky Claims Commission**  
**(As Amended at ARRS, April 12, 2018)**

**802 KAR 1:010. Tax appeal procedures~~[Hearing procedures]~~.**

RELATES TO: KRS Chapter 13B, 49.220, 49.230, 49.240, 49.250 ~~[131.340, 131.355, 131.365, 131.370, 133.130(10)]~~

STATUTORY AUTHORITY: KRS ~~[13B.170,]~~ 49.020, 49.220(1) ~~[131.340(1)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) ~~[13B.170]~~ authorizes the commission~~[Board of Tax Appeals]~~ to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the commission's statutory authority~~[of KRS Chapter 13B to establish procedures for appeals to the Kentucky Board of Tax Appeals]~~. KRS 49.220(1) authorizes the commission, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals~~[supplements the provisions of KRS 131.310 through 131.370, 133.120(10) and Chapter 13B]~~.

Section 1. Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to <mailto:taxappeals@ky.gov>, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(2) Service. Any party who files a document with the commission or hearing officer shall serve to all other parties to the appeal a copy of the document filed. A filed document shall be accompanied by a certification stating:

- (a) That a copy has been served on each party; and
- (b) The method of service used.

Section 2. Rules for Filing Tax Appeals with the Commission. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition of appeal with the commission.

(2) Timing. The initial petition of appeal shall be received by the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, the commission or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best of the petitioner's knowledge;

(c) The signature of the petitioner;

(d) The petitioner's mailing address, telephone number, and **email[e-mail]** address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and **email[e-mail]** address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the commission shall **provide notice to the:**

(a) ~~[Provide notice to the]~~ Appellee that an action has been filed; and

~~(b) [Provide notice to the] Petitioner that the petition of appeal has been received.~~~~[Definition. "Board" means Kentucky Board of Tax Appeals.]~~

#### ~~Section 2. Formal Administrative Hearings.~~

~~In accordance with KRS131.340 and Chapter 13B, an aggrieved party may petition the board for a formal hearing in accordance with KRS Chapter 13B.~~

~~(1) A petition shall:~~

~~(a) Be in writing;~~

~~(b) Be signed by the petitioner;~~

~~(c) Be styled "Petition of Appeal";~~

~~(d) Be filed in person or mailed by certified mail, return receipt requested, to the Kentucky Board of Tax Appeals and received by the board within thirty (30) days of the date of issuance of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal; and~~

~~(e) Contain a statement of all relevant issues of fact and law.~~

~~(2) Filing by facsimile or other electronic means shall not be accepted.~~

~~(3) The appealing party shall file:~~

~~(a) An original and four (4) copies of the Petition of Appeal; and~~

~~(b) Five (5) copies of the county board of assessment's final ruling, order, or determination.~~

~~(3) If a party who appeals fails to comply with any part of subsections (1), (2), (3), or (4) of this section, the board or the hearing officer shall:~~

~~(a) Dismiss the appeal for failure to comply; or~~

~~(b) If the appeal is timely filed, notify the appealing party of deficiencies and allow the appealing party fifteen (15) days to amend the petition.~~

~~(5) Upon receiving a petition of appeal, the Kentucky Board of Tax Appeals shall provide notice to the appellee that a Petition of Appeal has been filed. The appellee or his attorney shall file an entry of appearance within thirty (30) days of the date of the notice.]~~

~~Section 3. Representation in Proceedings before the Commission[Board]. (1) The appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the commission. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if any~~~~[If the appeal is by an individual, the individual whose tax liability is at issue shall appear and represent himself or herself or engage legal counsel to provide representation].~~

~~(2) An individual who is not an attorney shall not [be permitted to] represent any entity or other individual[er legal entity] who is a party to an appeal. [(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in Section 3(1) of this administrative regulation, the entity shall be represented by an attorney on all matters before the board, including the filing of the Petition of Appeal.~~

~~(4) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).]~~

~~Section 4. Discovery. (1) Discovery may be obtained without prior order of the commission[board] or hearing officer pursuant to the Kentucky Rules of Civil Procedure[30, 31, 33, 34, and 36, as amended].~~

~~(2) The commission[board] or hearing officer may deny, limit, or require discovery.~~

~~(3)[Sanctions.] If a party fails to comply with[obey] an order regarding discovery, the com-~~

mission[board] or hearing officer may order that the:

- (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;
  - (b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;~~[or]~~
  - (c) Appeal be dismissed or relief be granted as requested by the opposing party;
  - (d) Appeal be stayed until the order is obeyed; or
  - (e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.
- (4) A response to discovery under subsection (1) of this section shall not be filed with the commission[board] unless required by~~[an]~~ order or used as evidence~~[of the board or hearing officer]~~.

~~Section 5. [Subpoenas. Upon good cause shown, the board or hearing officer shall issue a subpoena to any party upon request, provided that the request for subpoena shall be received by the board or hearing officer at least sixty (60) days prior to the hearing.~~

~~Section 6.] Prehearing Filings. At least thirty (30) days prior to the hearing, a party shall file with the commission[board] or hearing officer a[the following]:~~

- ~~(1)[A] Prehearing summary that contains a[the following]:~~
  - ~~(a)[A] Summary of the party's position on any issue of fact in dispute;~~
  - ~~(b)[A] Summary of the party's position on any issue of law raised by the appeal; and~~
  - ~~(c)[A] Written statement of facts to which the party agrees and any facts that[which] a party does not dispute;~~
- ~~(2)[(d) A] List of the names, addresses, and phone numbers (if known) of all witnesses [who][which] the party expects to call to testify as a witness at the hearing; and~~
- ~~(3)[(e) A] Copy of all exhibits that[which] the party intends to introduce at the hearing.];~~
- ~~(2) Proposed findings of fact and conclusions of law; and~~
- ~~(3) A proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.~~

~~Section 7. Briefs. (1) A party shall file with the board or hearing officer any brief required by order of the board or hearing officer. If the board or hearing officer has not issued an order pertaining to briefs, then a party may file an original and four (4) copies of a brief.~~

~~(2) The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed, to assist in adjudicating the hearing.~~

~~(3) A brief shall be typewritten or hand printed. A photocopy shall be accepted. A copy of a brief shall be clearly legible and double spaced, except for quotations, on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point. A brief shall include a copy of any legal authority relied upon in the brief, unless this requirement is specifically waived by the board or hearing officer.]~~

~~Section 6. Motion Practice. (1)[Section 8. Motions, Responsive Pleadings, and Time Computation. (1) A party shall file an original and four (4) copies of all pleadings or motions with the board or hearing officer.(2)] Any[other] party affected by a motion or pleading may file[an original and four (4) copies of] a response to the motion or pleading within fifteen (15) days from the date on which the motion or pleading was originally served[upon all parties to the appeal].~~

~~(2)[(3)] A moving party may file[an original and four (4) copies of] a reply to another party's~~

response. The reply shall be filed within fifteen (15) days from the date the response was served.~~[No]~~ Other replies or responses shall not be filed, unless prior approval is granted by the commission[board] or hearing officer. ~~[Section 9. Notice of Motions and Pleadings. Any party who files a motion or pleading shall serve all other parties to the appeal a copy of the motion or pleading. A motion or pleading shall be accompanied by a certification that a copy has been served on each interested party.]~~

Section 7.~~[Section 10.]~~ Summary Disposition. At any time after an appeal~~[a proceeding]~~ has begun, a party may move for a summary disposition of the whole or a part of the appeal~~[proceeding]~~, in which event the~~[following]~~ procedure established in subsections (1) through (4) of this section shall apply. (1) The moving party shall file a motion that:

(a) Asserts~~[Assert]~~ that there are no disputed material facts as to one (1) or more of the issues before the commission[board] or hearing officer.~~[-]~~

(b)~~[The moving party shall]~~ Includes~~[in its motion]~~ a statement specifying which material facts are undisputed. A material undisputed fact may be submitted to the commission[board] or hearing officer through affidavits, discovery responses, or deposition testimony;

(c) States~~[or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the original petition or appeal, as well as any documents or exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee.]~~

(2) ~~The moving party shall state~~ that any issue before the commission[board] or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation; and

(d) Attaches ~~[- The moving party shall submit]~~ a copy of any legal authority that~~[which]~~ supports the moving party's position on any legal issue before the commission[board] or hearing officer.

(2)(a)~~[(3)]~~ Within twenty (20) days after a party moves for summary disposition~~[and complies with the requirements set forth in Section 9 of this administrative regulation]~~, any other party shall:

1.~~[may]~~ Submit ~~[to the board or hearing officer (a)]~~ an acknowledgment that there are no disputed material facts;

2. Submit a response stating that a material fact is in dispute, along with~~[or]~~ any affidavit, discovery response, or deposition testimony~~[or response to discovery]~~ that shows the material fact~~[facts to be]~~ in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and

3. Attach~~[(b)]~~ all legal authorities that~~[which]~~ support the opposing party's position on any legal issue.

(b)~~[(4)]~~ Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may~~[, shall]~~ result in the commission[board] or hearing officer finding~~[assuming]~~ there are no disputed factual issues~~[before it]~~ to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party~~[part]~~ shall have ten (10) days to file a reply to the response.

(4)~~[(5)]~~ The commission[board] or hearing officer may grant a motion for summary disposition in whole or in part. If the commission[board] or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the commission[board] or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 8. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B~~[Section 11. Time. KRS 446.030 shall apply to computation of time under this administrative regulation].~~

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

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